Exhibit 2

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Mesh litigation on the rise, Hellhole report says

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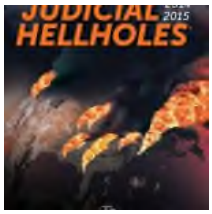
CHARLESTON – Aside from asbestos claims, mesh litigation has become the largest mass tort and is centered in the U.S. District Court for the Southern District of West Virginia, according to the latest Judicial Hellholes report released by the American Tort Reform Foundation.



Mesh litigation is also concentrated in Philadelphia, Pa.; Bergen County, N.J.; and Middlesex County, Mass., and is pending in California, Delaware, Missouri and Texas.

Plaintiffs' lawyers have filed more than 100,000 product liability claims against mesh manufacturers around the country, according to the report. More than 60,000 of those claims are pending in the U.S. District Court for the Southern District of West Virginia before District Judge Joseph R. Goodwin.

In the first ten months of 2014, lawyers spent an estimated $45 million on television advertising regarding mesh litigation, according to the report.

"Spending on advertising, which was already trending at an astounding $2 million per month for about a year, spiked after one mesh maker announced it was settling 20,000 lawsuits in late April 2014," the report states.


Goodwin

The trial bar spent more than $2.5 million on mesh litigation advertising in April, $5.5 million in May, nearly $7.9 million in June and $8.2 million in July. Spending tapered off in September and October.

Approximately 8,000 television advertisements aired nationwide in May in an attempt to recruit individuals for pelvic mesh lawsuits, according to the report.

Because of all the mesh litigation and the increase in litigation costs, some manufacturers are halting the sale of their products and affected women are losing viable treatment options, according to the report.

"The excessive litigation has chilled, if not frozen, medical advancements in this field," the report states.

No group of medical experts has recommended removing a mesh product from the market or withholding them from surgeons' use, according to the report.

" The AUGS and the American College of Ob/Gyn (ACOG) strongly oppose restrictions by state or medical organizations, healthcare systems or insurance companies that ban currently available surgical options. Instead, they focus on ensuring that doctors appropriately inform their patients of all of the risks and benefits to the procedures."

Currently, the Food and Drug Administration is re-evaluating the process it uses to assess pelvic mesh implants and it may reclassify them as a "Class III device," which would allow the FDA to require clinical trials that would compare procedures using mesh with those that do not use mesh.


Bell

A court-mandated ban on these products could prohibit women from having access to an FDA-accepted option that can significantly improve their quality of life, according to the report.

There have not been many mesh cases that have gone to trial, considering the amount of cases filed nationwide. In those few, the outcomes have been inconsistent.

"A few cases have resulted in gigantic awards, while several others have resulted in full defense verdicts," the report states. "The key to such results is whether the court conducted a fair trial. As the Judicial Hellholes report has long documented, prejudicial court procedures often underlie extraordinary verdicts. That is the case with pelvic mesh litigation."

In some cases, judges have allowed plaintiffs' lawyers to introduce inflammatory evidence while precluding defendants from presenting pertinent information, according to the report. In some cases, judges have even prevented the defendants from telling juries about the FDA's process for clearing the devices.

"Another prejudicial practice that significantly increases the likelihood of an unwarranted or inflated verdict is the consolidation of multiple cases for trial," the report states. "Just as they are in asbestos and pharmaceutical litigation, judges are tempted by plaintiffs' lawyers to go the consolidation route when there are thousands of cases on the court docket."

But consolidation invariably puts court efficiency over the defendants' due process, according to the report.

The report states that consolidation confusingly mingles evidence by placing the experiences of more than one plaintiff in front of the same jury at the same time.

"Empirical studies show that multi-plaintiff trials more often result in more and larger plaintiffs' verdicts than when cases are tried on their individual merits," the report states.

Harry F. Bell Jr., a Charleston attorney who is involved on the plaintiffs side of the federal litigation in Charleston, said it's important to look at the benefits of an MDL.

"You have to look at MDL litigations as something defendants really like because it provides a great deal of efficiency," Bell said. "They can manage and handle claims in such a fashion that it's far more economical. It's coordinated. That's how the whole MDL system works.

"The defendants would prefer to see the cases in federal court in an MDL rather than all of the place."

Bell also said it's good for Charleston and West Virginia for MDLs to be assigned here.

"It is a great feather in West Virginia's cap to have them assigned here," Bell said. "Many years ago, before the new federal courthouse was built, that was something Judge (Charles) Haden really wanted to see.

"The MDLs are going to happen somewhere. Why not here? It brings people to the area. The local economy – the hotels, the restaurants, the airport, the rental car companies – they all appreciate the business."

As the trial bar looks to squeeze as much profit as possible from mesh litigation, plaintiffs' lawyers from all over the country are creatively seeking to avoid federal court jurisdiction, preferring to try their cases before home-state judges or even more plaintiff-friendly courts in other states, according to the report.

"One method plaintiffs' lawyers use to avoid federal court jurisdiction is to name as a tangential defendant an in-state company that makes a component of the device in question," the report states. "This sidesteps the 'complete diversity' of citizenship requirement for federal court involvement."

Some judges have allowed this practice to flourish, according to the report, even as others have recognized these tactics for what they are and dismissed claims against local defendants that are immune from suit under federal law.

Plaintiffs' lawyers are also avoiding federal court jurisdiction by filing lawsuits in batches of under 100 plaintiffs.

"This avoids triggering federal jurisdiction as a 'mass action' under the Class Action Fairness Act."

Bell also noted that the mesh litigation awards that have come out of West Virginia have been some of the smallest such awards in the country.

"That goes back to our juries here in West Virginia," he said. "They're conservative. They usually end up awarding lower verdicts."

This entry was posted in Federal Court, News and tagged American Tort Reform Association, Harry F. Bell Jr., Joseph Goodwin, Judicial Hellholes, MDL, mesh litigation. Bookmark the permalink.

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